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Company

12 **UNITED STATES BANKRUPTCY COURT**
13 **NORTHERN DISTRICT OF CALIFORNIA**
14 **OAKLAND DIVISION**

15 In re:

16 THE ROMAN CATHOLIC BISHOP OF
17 OAKLAND,

18 Debtor.

Case No. 23-40523-WJL

Chapter 11

**PACIFIC'S SUPPLEMENTAL NOTICE
ADDRESSING PROPOSED
MODIFICATIONS TO
CONFIDENTIALITY AGREEMENT
AND STIPULATED PROTECTIVE
ORDER**

Date: July 19, 2023

Time: 1:30 p.m.

Place: United States Bankruptcy Court
1300 Clay Street
Courtroom 220
Oakland, CA 94612

ECF No. 236

1 Pacific Employers Insurance Company (“Pacific”) submits this supplemental notice to
2 address several essential proposed modifications to the *Confidentiality Agreement and Stipulated*
3 *Protective Order* (ECF No. 236) (“Proposed Order”)¹ and respectfully requests that the proposed
4 order attached in Exhibits A (redline) and B (clean copy) be entered in these Chapter 11
5 proceedings.² The changes sought are essential to protect privileged information generated in the
6 defense and assessment of underlying abuse claims asserted against the Debtor.
7

8 *First*, Pacific and the other insurers are parties in interest who must be included as
9 Receiving Parties under the Proposed Order to efficiently and appropriately assess the underlying
10 abuse claims asserted against the Debtor. Excluding Pacific and the other insurers would only
11 result in protracted and avoidable discovery disputes, resulting in delays in future mediation
12 proceedings or settlement discussions among the parties and adjudication of discovery challenges,
13 significantly increasing the cost to the estate.
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15 *Second*, the Debtor’s Proposed Order lacks basic protections designed to prevent
16 disclosure of privileged information. In fact, certain provisions of Debtor’s Proposed Order
17 permit the Debtor to share any document or information with the Committee just by their mutual
18 agreement. For example, section 10(d) of Debtor’s Proposed Order permits broad disclosure of
19 all Discovery Materials to “[a]ny Party, with the consent of the Producing Person, who has signed
20 a [confidentiality] Declaration.” Additionally, the Protective Order does not preclude the Debtor
21 from sharing Pacific’s or any other insurer’s privileged information or privileged information that
22 may be generated in a future underlying defense in the event the insurers participate in a joint
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25 ¹ Debtor and the Official Committee of Unsecured Creditors (the “Committee”) filed the Proposed Order on July
26 14, 2023 without consultation of any other parties in interest, including Pacific and the other insurers. There was no
27 opportunity for Pacific to provide input for the Proposed Order nor was there any notice or hearing scheduled for
28 purposes of parties to file and argue objections to the Proposed Order.

² Pacific remains available for discussions with the Debtor, the Committee and other parties in interest regarding the matters set forth herein.

1 defense with the Debtor. Not including such restrictions would eviscerate long-standing and
2 established privilege doctrine in any such defense against abuse claimants.

3 *Lastly*, the Proposed Order eliminates conventional litigation protections by allowing a
4 third party to control witness examination and preparation and requiring that parties effectively
5 give advance notice to the Producing Party—who may be the opposing party in the litigation
6 matter for which the witness is being prepared—of the documents being reviewed. Section 11(d)
7 requires that, for examination of an adverse witness, and Section 11(e) requires that, for witness
8 preparation, not only must the witness must sign the Declaration but consent of the producing
9 party be obtained before the witness may be shown confidential material. Allowing a third party
10 to control whether and how a witness being prepared is objectively unreasonable. Moreover,
11 Section 11(e) would require giving notice to at least one third party of certain documents that the
12 witness is reviewing, thereby undermining trial preparation.
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15 As Debtor's Proposed Order does not include these protections, Pacific respectfully
16 requests that the Court instead enter an order containing the modifications indicated in the
17 blacklined version attached hereto as Exhibit A, a clean form of which is provided as Exhibit B
18 hereto.
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1 Dated: July 19, 2023

Respectfully Submitted,

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3 /s/ Karen Rinehart

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